IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3.10.2007

CORAM

THE HONOURABLE MR. JUSTICE K. RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

TAX CASE APPEAL NO.347 OF 2004

Commissioner of Income Tax
Salem. ... Appellant

Vs.

M/s. Obli Granites
Salem. ... Respondent

Tax Case Appeal filed against the order of the Income Tax Appellate Tribunal, Madras `D' Bench, dated 15.5.2002 in I.T.A.No.1537/Mds/94, against the order of the Commissioner of Income Tax (Appeals), Coimbatore,dt.21.4.94 in ITA.No.79-C,80-C and 81-C/94-95 against the order of the Asst.Commissioner of Income Tax, Central Circle II, Coimbatore dt.31.3.94 in P.A.No.47-054-Fq-7019/Cent.II/CBE.

For Appellant : Mr. T. Ravikumar
Standing Counsel for Income Tax

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J U D G M E N T
(Judgment of the Court was delivered by
K. Raviraja Pandian, J.)

The Revenue has filed this appeal against the order of the Tribunal dated 15.5.2002 made in I.T.A.No.1537/Mds/94.

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2. The appeal was admitted on the following substantial question of law:-

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the benefit of section 80HHC is available for the export of granite slabs for the year 1989-1990?"

3. The material facts for the purpose of disposal of the appeal is as follows:-

The assessee is a partnership firm carrying on business in granites. For the assessment year 1989-1990, the assessee had claimed the benefit of deduction under Section 80HHC for export of rough granites. The Assessing Officer denied the benefit of the exemption under Section 80HHC on the ground that the granites fall under the category of ores and minerals and are not eligible for the benefit of 80HHC. The Assessing Officer relied on the judgment of the Supreme Court in the case of State of Mysore vs. Swamy Satyanand Saraswathi reported in AIR 1971 SC 1569 and the Karnataka High Court in the case of Muddeereswari Mining Industries vs. CIT reported in 204 ITR 550 to reach such conclusion. Aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). He gave relief to the assessee holding that the amendment to Section 80HHC by Finance Act, 1990 which amended the 12th Schedule to include "cut and polished minerals and rocks including cut and polished granites", should be read as explanatory and that the benefit under Section 80HHC was available even during the earlier years. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Income Tax Appellate Tribunal on the ground that during the relevant assessment year, minerals and ores were not eligible for the benefit of Section 80HHC and the subsequent amendment including the same cannot be given the retrospective benefits. However, the Tribunal by the impugned order dismissed the Department's appeal holding that even prior to the amendment including "cut and polished minerals and rocks including cut and polished granites" for the benefit of Section 80HHC, the income from export of granite is eligible for its benefit. The correctness of the said order is now put in issue before this Court by filing the appeal and framing the question of law as aforesaid.

3. We heard the learned standing counsel appearing for the Revenue and perused the materials placed on record.

4. The issue is squarely covered by the three Judges Bench judgment in GEM GRANITES VS. COMMISSIONER OF INCOME TAX reported in 271 ITR 332, wherein it has been held that the assessee which exported the granites after being cut and polished was not entitled to claim the

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deduction under Section 80HHC of the Income Tax Act, 1961, in respect of the profits from the export business for the assessment year 1987-1988. For the assessment year prior to the incorporation of the amendment to sub-section 2 of Section 80HHC in the year 1991, the very same issue has been considered by us following the Supreme Court judgment in T.C.Nos. 426 & 427 of 2004, dated 16.8.2007. Hence, the tax case appeal is allowed in favour of the Revenue. No costs.

kb

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Commissioner of Income Tax,
   Salem.

2. The Asst.Registrar, income Tax Appellate Tribunal,
   Rajaji Bhavan, III Floor, Besant Nagar, Madras-90.

3. The Asst.Commissioner of Income Tax,
   Central Circle II, Chennai Bench 'D', Coimbatore.

4. The Commissioner of Income Tax,
   (Appeals) Coimbatore.

+1 cc to Mr.N.Muralikumaran, Advocate Sr.No.61782.

RA(CO)
dcp/18.10

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